

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 08-69940

WHYCO FINISHING TECHNOLOGY, LLC,

Chapter 11

Debtor.

Judge Thomas J. Tucker

ORDER REQUIRING DEBTOR TO AMEND DISCLOSURE STATEMENT

On April 14, 2009, Debtor filed a plan and disclosure statement, in a document entitled “Debtor’s Combined Plan of Reorganization and Disclosure Statement” (Docket # 104). The Court cannot yet grant preliminary approval of the disclosure statement contained within this document (“Disclosure Statement”). The Court notes the following problems, which Debtor must correct.

First, Article 2, Paragraph 2.1 of the Plan on page 7 describes the treatment of Group I Administrative Claims. Debtor must amend this paragraph to: (1) describe the types of administrative claims that it expects to have in this case; (2) provide an estimate of the amount of the administrative claims by type; and (3) provide an estimate of the total amount of all administrative claims, including Debtor’s attorney fees.

Second, Article 2, Paragraph 2.2 of the Plan on pages 7-8 describes the treatment of Group II Statutory Fees. Debtor must amend this paragraph to provide an estimate of the statutory fees it expects to pay.

Third, Article 2, Paragraph 2.3 of the Plan on page 8 describes the treatment of Group III Priority Tax Claims. Debtor must amend this paragraph to list the entities that Debtor is proposing to treat in this class and the amount owed to each such entity.

Fourth, Article 2, Paragraph 2.4 of the Plan on page 9 describes the treatment of Group

IV Priority Claims. Debtor must amend this paragraph to list the entities that Debtor is proposing to treat in this class and the amount owed to each such entity.

Fifth, the Plan treats Equity Interests in the same Article in which it treats groups of claimants that are not subject to classification and not entitled to vote on the Plan. (*See* Article 2, Paragraph 2.5 of the Plan on page 9.) Equity interests are subject to classification, and therefore, must be treated under Article 3 (*i.e.*, in a new Class II under Article 3). Debtor must state who currently holds the equity interests in Debtor (*i.e.*, William Aikens (74.75%), Nicholas Post (19%), and Al Atkinson (6.25%)), and provide the treatment of these equity interests. Unless otherwise provided in the plan or in an order confirming a Chapter 11 plan, the general rule is that the confirmation of a plan “terminates all rights and interests of equity security holders . . . provided for by the plan.” 11 U.S.C. § 1141(d)(1)(B). The Plan must indicate who will own the Reorganized Debtor (*e.g.*, Debtor must state whether Mr. Aikens, Mr. Post and Mr. Atkinson will retain their equity interests).

Sixth, the Disclosure Statement at Section II on page 21 describes the background of William Aikens, but does not describe the background of Nicholas Post or Al Atkinson. Debtor must amend this section to describe the backgrounds of Mr. Post and Mr. Atkinson. With regard to each of the three principals, Debtor must also state their relationship with Debtor. With regard to Mr. Post and Mr. Atkins, Debtor must state what positions they hold with the Debtor for which they are paid the salary figures described in this section and for what time period they are paid \$250,000 and \$100,000 (*e.g.*, biweekly, annually). Debtor must also state whether any of

the principals receive any fringe benefits. If they do not receive any fringe benefits, Debtor must state this.

Seventh, Section III of the Disclosure Statement on pages 21-22 state that the filing of this bankruptcy case was due to “substantial losses incurred by [Debtor’s] three subsidiaries” and decreasing revenue “as a result of the current general economic conditions.” Debtor must amend this section to state what caused the substantial losses of Debtor’s subsidiaries and to state more specifically what happened to Debtor’s business as a result of the economic downturn.

Eighth, Section IV of the Disclosure Statement on pages 22-23 describes post-petition events of significance. This section states, in relevant part, that “Debtor sought and received authorization to use its cash collateral pursuant to Section 363 of the Bankruptcy Code and its authority to use cash collateral expires on April 14, 2009.” Debtor must update this statement, in light of the Order entered on April 23, 2009 (Docket # 115).

Ninth, the Disclosure Statement at Section V.B on page 23 incorporates a *partial* Liquidation Analysis in Exhibit A. Debtor must amend Exhibit A to include an estimate of the various types of claims against the estate (*i.e.*, administrative claims, priority tax claims, other priority claims, and general unsecured claims). Debtor must also carry though and provide an estimate of the distribution, if any, to general unsecured creditors in a liquidation, after payment of administrative and priority claims.

Tenth, the Disclosure Statement at Section V.E. on page 24 describes claims. Debtor must amend this section to include an estimate of its administrative claims. Debtor must also break down its estimate for priority claims so that it includes an estimate of what portion of the priority claims consist of priority tax claims and what portion consists of other priority claims.

Finally, Debtor must state what creditors have purchase money security interests in what collateral. The liquidation analysis does not indicate that any of the assets are subject to a purchase money security interest.

Eleventh, the Disclosure Statement at Section VI on page 24 states that “Post-Confirmation, the Reorganized Debtor will be managed by Debtor’s current management team.” It is unclear from the Disclosure Statement who the current management team is. Debtor must amend this section to specifically state the names and positions of all of the people who will manage the Reorganized Debtor, and what their salary and fringe benefits, if any, will be.

Twelfth, the Disclosure Statement at Section VII.A on page 24 provides financial information regarding the Debtor. It incorporates Exhibit B to provide financial information for the pre-petition years of 2006, 2007, and 2008. Debtor must amend this section so that it provides this financial information in the line itemization format that it uses to provide its financial projections (*see* Exhibit C).

Thirteenth, Debtor must amend the first bulleted sentence in Section VIII.C of the Disclosure Statement on page 26, by replacing “paragraph B, above,” by “paragraph VIII.B above,” so that there is no ambiguity as to which paragraph B Debtor is referring.

Fourteenth, Debtor must add a new section to the Disclosure Statement entitled the “Official Committee of Unsecured Creditors’ (the “Committee’s”) Objection to Preliminary Approval of Debtor’s Disclosure Statement.” Debtor must state that the Committee has filed objections to the preliminary approval of Debtor’s Disclosure Statement. Then Debtor must state that “The Committee contends: [Quote in full Paragraphs A and B of the Committee’s Objection

on pages 1-3 of Docket # 113].” Debtor may, if it chooses, also include a section giving the Debtor’s response to the Committee’s objections.

Fifteenth, Debtor must disclose the following information, which was listed as missing in the Committee’s Objection to Preliminary Approval of Debtor’s Disclosure Statement:

- ☐ A description of any and all legal relationships between the principals, and any entity owned or controlled by principals, and the Debtor;
- ☐ A detailed description of any past business transactions between principals, and any entity owned or controlled by principals, and the Debtor;
- ☐ Disclosure of the details of all real estate and equipment appraisals that have been performed;
- ☐ Disclosure of the historical cost for real estate and equipment;
- ☐ A description of all potential claims and causes of action, including claims against insiders and avoidance actions and an estimation of the value of any expected recovery from such claims. If the Debtor does not intend to pursue any such claim, the reason not to pursue;
- ☐ Disclosure of the value of any collateral securing Mr. Aiken’s guaranty; and
- ☐ Information relating to the value of asset and claims against the three operating subsidiaries.

Accordingly,

IT IS ORDERED that Debtor must file, no later than **May 7, 2009**, an amended combined plan and disclosure statement which corrects the above stated problems.

IT IS FURTHER ORDERED that Debtor also must provide to Judge’s chambers, no later than **May 7, 2009**, a redlined version of the amended combined plan and disclosure statement, showing the changes Debtor has made to “Debtor’s Combined Plan of Reorganization and Disclosure Statement” filed April 14, 2009. Debtor must submit this redlined document to

chambers electronically, through the Court's order submission program.

Signed on April 28, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge